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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/926,235  | 06/03/2002  | Xavier Leboucher     | 214457US6PCT        | 2554             |
| 22850   | 7590        | 02/04/2004           | EXAMINER            |                  |
| OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.<br>1940 DUKE STREET<br>ALEXANDRIA, VA 22314 |             |                      | CARTAGENA, MELVIN A |                  |
|   |             | ART UNIT             | PAPER NUMBER        |                  |
|   |             | 3754                 | 18                  |                  |
| DATE MAILED: 02/04/2004   |             |                      |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

| <b>Office Action Summary</b> | Application No.<br>09/926,235   | Applicant(s)<br>LEBOUCHER, XAVIER |
|------------------------------|---------------------------------|-----------------------------------|
|                              | Examiner<br>Melvin A. Cartagena | Art Unit<br>3754                  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 20 November 2003.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-6 and 8-16 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-6 and 8-16 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All    b)  Some \* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.  
\_\_\_\_\_

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 20, 2003 has been entered.

***Priority***

2. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent Application No. 99 03966, filed on February 9, 2000.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-5, 8-10, 12 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,813,571 to Gaucher.

Gaucher shows a packaging device with metered pump as seen in Figs. 1-7, see column 7 lines 17-20, a bag 1 formed by molding, see column 3 lines 32-33, a first portion 1 and a second portion 2 thicker than a portion 1, see column 6 lines 59-61, attaching means 4 welded to the portion 2, see column 7 lines 20-24, attaching means 6 for attaching to the pump 11, means 5 for

attaching to casing 9 and a cap 12, a shoulder 8b, a neck 8a, a continuous peripheral flange 3, the bag has a "V" profile defined by the volume 35, a casing surrounding the bag and a boss 8c.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 6, 11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,813,571 to Gaucher in view of US 6,308,862 to Fillmore et al.

Gaucher shows all claimed features as discussed above except for a ratchet ring and a second bag. Fillmore shows a dispensing package for dual viscous product as seen in Figs. 1-19, with two bags 45 and a ratchet ring, see Fig. 6 bellow flange 43. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to provide the device of Gaucher with a ratchet ring and multiple bags as taught by Fillmore since the ratchet is an alternative equivalent means for securing the bag to the casing of the one used by Gaucher and multiple bags are commonly used to store two or more elements that need to be kept separated, because of their chemical nature, till they are ready to be used, see column 1 lines 59-65.

***Response to Arguments***

7. Applicant's arguments filed November 26, 2003 have been fully considered but they are not persuasive. The means for attaching the bag to the pump, the casing and the pump cover are shown in the ring 4, which is made part of the ticker portion of the bag by welding.

***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin A. Cartagena whose telephone number is (703) 308-5810. The examiner can normally be reached on M-F (7:30AM to 4:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Louis G. Mancene can be reached on (703) 308-2696. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MAC 2/2/04  
MAC



Gene Mancene  
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Group 3700